

ALVIN COMMUNITY COLLEGE PURCHASE ORDER TERMS AND CONDITIONS

1. Acceptance – This Purchase Order (“PO”) constitutes a binding contract between Alvin Community College (“ACC”) and Vendor to furnish the goods and/or services specific on the face of the PO. By acceptance of this PO, Vendor agrees to furnish all goods and/or services in accordance with the terms and conditions specified herein. Acceptance of Vendor’s goods and/or services does not constitute acceptance of any terms or conditions stated in Vendor’s documentation or agreements. This PO is valid only when an order number and a written or stamped signature of an ACC authorized representative appear in the spaces provided. The PO number must appear on all invoices, bills of lading, packages, and correspondence.
2. Agreement – This PO and the terms and conditions specified in the Request for Proposals (“RFP”), if any, and any contract entered into between ACC and Vendor (“Contract”) represent the basis for Vendor to deliver the required goods and/or services. This PO, the RFP, and Contract constitute the entire agreement of ACC and Vendor and supersede all prior offers, negotiations, exceptions and understandings, whether oral or in writing. In the event of a conflict between this PO and the RFP or the Contract, the Contract shall control. In the event of a conflict between this PO and the RFP, the RFP shall control. To the extent that terms and conditions appearing on the face of this PO conflict with those set forth herein, the terms on the face of the PO shall govern.
3. Taxes – ACC certifies it is exempt from the payment of property, sales, use, franchise, excise, and other taxes. ACC shall not pay or be liable for taxes for the goods and/or services, and Vendor shall not include taxes on the invoice.
4. Performance – By acceptance of this PO, Vendor agrees (1) to use commercially reasonable best efforts to furnish the goods and/or services, and (2) to deliver the goods and/or render the services in conformance with the specifications and descriptions identified on the face of the PO. No substitutions of goods or change of services, delivery dates or price increases shall be made without ACC’s prior written approval. Vendor agrees to comply with all applicable federal, state, and local laws, orders, rules, and regulations. Vendor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this PO. In the event no quality is specified on the face of the PO, the goods delivered and/or services rendered hereunder shall be of the best quality. Vendor shall ensure that all goods delivered to ACC be new (i.e., previously unused and in their original packaging) and have not been reconditioned, repackaged, returned, remanufactured, refurbished, or damaged. If applicable, Vendor shall deliver Material Safety Data Sheets (MSDS) with the requested goods. Vendor shall comply fully with all applicable safety and health laws, ordinances, rules, and regulations, including, without limitation, those promulgated by ACC and by the Occupational Safety and Health Administration (“OSHA”). In case of conflict, the most stringent safety requirements shall govern. Vendor agrees to perform services(s) rendered safely, diligently, efficiently, and in a professional manner.
5. Price; Quantities – The price(s) specified on the face of the PO shall remain firm until ACC has processed Vendor’s invoice or until the goods and/or services have been accepted by ACC, whichever is later. Unless otherwise specified on the face of the PO, the price(s) shown includes the cost for: (a) freight, delivery, unloading and placement of the goods in the designated location within a building; and, (b) for equipment and furniture, uncrating, complete assembly, adjustment, testing and removal of all debris. The quantities specified for delivery in the PO are the only quantities required by ACC. If Vendor delivers quantities in excess of those specified on the PO, ACC is not required to make any payment for the excess goods and, at ACC’s election, ACC may keep or return the excess goods. All risk and expense for the return of the quantities of goods in excess of those specified on the face of the PO shall be borne by Vendor unless prior written authorization is issued by ACC.
6. Delivery; Title – Unless specified otherwise on the face of this PO, deliveries shall be made to ACC’s central receiving dock on regular business days between the hours of 7:30 a.m. and 3:00 p.m. ACC is closed on Fridays during the months of May through August. No C.O.D. shipments or deliveries on ACC holidays will be accepted. Unless otherwise stated on the face of the PO, Vendor shall deliver all goods Freight Prepaid, Free on Board Destination (“F.O.B. destination”), Full Freight Allowed, Inside Delivery. Notwithstanding the F.O.B. point specified in the PO, Vendor shall be liable for handling claims for, and the replacement of goods, lost or damaged prior to acceptance by Buyer. If, at any time, Vendor believes it may be unable to comply with the delivery or completion schedules, Vendor must immediately notify ACC in writing of the probable length of any anticipated delay, the reasons for the delay, and the estimated delivery/completion date(s). In the event of such notification or of an actual failure by Vendor to comply with the delivery or completion schedules, ACC may, in its sole discretion, in addition to all other remedies, require Vendor, at Vendor’s expense, to ship the goods via airfreight or expedited routing to avoid or minimize delay or may cancel this PO. Time is of the essence in the delivery of goods and/or providing of services. The title and risk of loss to any and all goods, products, merchandise, materials, and/or services that are provided to ACC shall pass to ACC upon acceptance of the item or payment of the applicable invoice, whichever is later.
7. Warranties – In addition to the warranties provided by law, Vendor expressly warrants that it has the right to sell the goods and/or services provided under this PO and warrants, for a period of one (1) year from the date of acceptance of the goods and/or services or payment of the applicable invoice, whichever is later, that the goods and/or services: (a) will be in full conformity with all specifications, plans and samples and will be new, of good quality, material and workmanship, merchantable, fit for the use and purpose for which they were intended and free from defects; (b) will be manufactured, sold, delivered and installed in compliance with the provisions of all applicable federal, state and local laws, ordinances rules and regulations; and (c) will not infringe on any valid intellectual property right. Any and all warranties made by the manufacturer or supplier of goods delivered by Vendor are hereby assigned to ACC, and nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of ACC. Vendor will bear the cost of inspecting, testing and/or replacement of rejected goods and/or services. Warranties granted herein shall survive inspection, testing, acceptance and payment and shall accrue to ACC.
8. Inspection – Prior to acceptance of any goods and/or services and continuing for a period of thirty (30) days after ACC’s first use of the goods and/or services, ACC reserves the absolute right to inspect, test, and reject all goods and/or services, in whole or in part, furnished by Vendor, to insure that they comply with this PO. This right shall exist even if payment has already been made by ACC to Vendor. Goods or services which, in the sole opinion of ACC, fail to conform to the required specification(s) or standard(s) may be considered non-conforming.
9. Non-Conformance – Vendor assumes all liability for delivering goods that do not meet the specification(s) and standard(s) specified on the PO. Any non-conforming goods and/or services which are delivered to ACC are accepted under a “reservation of ACC’s rights” to contest, dispute, offset, reject, or return the non-conforming goods and/or services, in whole or in part. Any tender of goods or performance of services by Vendor which are non-conforming as to the quality, quantity, price, or the delivery schedule shall constitute a breach of this PO and ACC shall have the absolute right to reject the goods and/or services, in whole or in part. In the event that ACC does not accept any goods and/or services which have been submitted to ACC, ACC is entitled to any and all remedies that are provided in law or in equity. In addition thereto, ACC may take the following action(s), in ACC’s sole discretion, and Vendor agrees to comply with ACC’s action(s):

- to hold the non-conforming goods and/or services for a reasonable period at Vendor's risk and expense pending a determination to accept or reject any or all thereof;
 - to return the non-conforming goods and/or services to Vendor at ACC's election and at Vendor's risk and expense for replacement or correction, in which case Vendor shall use commercial best efforts to replace any non-conforming goods and/or services at Vendor's risk and expense;
 - to accept the non-conforming goods and/or services subject to an equitable price reduction;
 - to replace or correct the non-conforming goods and/or services by purchasing substitute goods and/or services on commercially reasonable terms and charge to Vendor the cost incurred by ACC thereby;
 - to recover by offset or otherwise any and all expenses, costs, price reductions, and damages paid, incurred, or suffered by ACC as a result of the holding, return, replacement, correction, reductions, or rejections of non-conforming goods and/or services; or
 - to terminate this PO.
10. **Insurance** – In the event this PO requires or contemplates performance of services by Vendor's employees or person(s) under contract to Vendor to be done on ACC's property, Vendor agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of ACC. Vendor shall maintain all necessary insurance coverage, including public liability and Workmen's Compensation insurance sufficient to meet all liabilities mentioned herein. Vendor shall indemnify and save harmless and defend ACC from any and all claims or liabilities arising out of the work covered by this paragraph.
 11. **Invoices** – Invoices will not be paid and will be returned to Vendor for correction if they: (a) do not reference this PO number; (b) are for a higher cost than shown on this PO, (c) list goods or services other than those shown on this PO; or (d) are damaged or incomplete. Invoices must show the quantity, description and unit cost of items. Neither this PO nor payments to be made may be assigned without the express written consent of ACC. Email all invoices to AP@alvincollege.edu or mail them to Alvin Community College, Accounts Payable, 3110 Mustang Road, Alvin, TX 77511. Vendor shall submit invoices within a timely manner during ACC's fiscal year in which the good(s) and/or services are purchased. In accordance with Texas Government Code § 2251.021, payments are due to Vendor within forty-five (45) days after the later of the following: (1) the date ACC receives the goods; (2) the date the performance of the service is completed; or (3) the date ACC receives an invoice for the goods or service. Payment for any goods or services does not constitute final acceptance.
 12. **Non-Appropriation** – This PO is a commitment by ACC of funds in its current budget. When applicable, ACC will exercise its best efforts to obtain and appropriate funds for subsequent budget periods. In the event ACC is unable to secure sufficient funds in subsequent budget periods to fulfill all of ACC's obligations hereunder, this PO will automatically terminate at the end of the applicable budget period.
 13. **Indemnification** – **To the fullest extent permitted by law, Vendor agrees to indemnify, defend, and hold whole and harmless ACC, its Board of Regents, employees, and agents (collectively, the "Indemnified Parties") from and against all claims, demands, causes of action, losses, costs and expenses, including without limitation, reasonable attorneys' fees and costs of defense (collectively, "Losses"), arising out of, relating to, or incident to (a) Vendor's performance hereunder, (b) the presence of Vendor, its employees, agents or invitees on ACC's premises, (c) any breach of any warranty of Vendor contained herein, and (d) any claim of patent, trademark, copyright, franchise or other intellectual property infringement by goods and/or services provided by Vendor hereunder, provided that Vendor shall not be liable for Losses to the extent caused by the negligence or willful misconduct of any Indemnified Party.** Vendor's obligation under this clause shall survive acceptance and the payment for the goods and/or services by ACC.
 14. **Assignment** – Vendor's rights and responsibilities to furnish the goods and/or services specified herein shall not be subcontracted, assigned, transferred, mortgaged, pledged or otherwise disposed of or encumbered in any way by Vendor, without the prior written approval of ACC. Any attempted assignment by the Vendor shall be null and void.
 15. **No Waiver** – Failure of ACC to insist upon strict compliance to the terms, conditions, and provisions of this PO is not a waiver and does not imply that strict adherence will not be required on this or future POs.
 16. **Termination for Convenience** – ACC reserves the right to terminate this PO or any part hereof for its sole convenience at any time upon thirty (30) days prior written notice to Vendor. Upon receipt of such notice, Vendor shall immediately stop all work hereunder and shall immediately cause any of its suppliers or subcontractors to cease such work. Vendor shall be paid, to the extent of funds appropriated or otherwise legally available for such purpose, a reasonable termination charge consisting of a percentage of the PO price reflecting the percentage of the work performed prior to the notice of termination. Vendor shall not be paid for any work done after receipt of a notice of termination, or for any costs incurred by Vendor's suppliers or subcontractors which Vendor could reasonably have avoided.
 17. **Governing Law and Venue** – This PO shall be governed by the laws of the State of Texas, without regard to its conflicts of laws principles. The exclusive venue for any dispute under this PO is Brazoria County, Texas.
 18. **Additional Legal Requirements** – Vendor certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Pursuant to section 2270.002 of the Texas Government Code, Vendor certifies that either (i) it meets an exemption criteria under section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract. Vendor shall state any facts that make it exempt from the boycott certification.
 19. **Product Recall** – Vendor shall notify ACC immediately if a product recall is instituted on any good and/or service Vendor has delivered or if Vendor discovers or becomes aware of any quality or other deficiency in the delivered goods and/or services. This requirement shall survive payment and acceptance of the goods and/or services.
 20. **Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. (SB 19)** – If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. This verification is not required for an agreement with a sole-source provider; or a governmental entity that does not receive bids from a company that is able to provide this verification.
 21. **Prohibition on Contracts with Companies Boycotting Certain Energy Companies (SB 13)** – If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.